

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                      |   |                      |
|--------------------------------------|---|----------------------|
| In the Matter of                     | ) |                      |
|                                      | ) |                      |
| Amendment of Section 73.202(b),      | ) | MB Docket No. 03-247 |
| Table of Allotments,                 | ) | RM-10831             |
| FM Broadcast Stations.               | ) |                      |
| (Bald Knob and Greenbrier, Arkansas) | ) |                      |

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: December 3, 2003**

**Released: December 8, 2003**

**Comment Date: January 30, 2004**

**Reply Date: February 17, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Caldwell Broadcasting, LLC ("Petitioner"), licensee of Station KKSJ(FM), Channel 296C3, Bald Knob, Arkansas, pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules. Petitioner requests the reallocation of Channel 296C3 to Greenbrier, Arkansas, and the modification of the license of Station KKSJ(FM) accordingly. Petitioner states that it will apply for Channel 296C3 when allotted to Greenbrier and further states that it will construct the facilities if the application is granted.

2. Petitioner states that it desires to change the community of license for Station KKSJ(FM) from Bald Knob to Greenbrier under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*.<sup>1</sup> Petitioner states that the proposed use of Channel 296C3 at Greenbrier is mutually exclusive with the current use of Channel 296C3 at Bald Knob. Petitioner further states that Bald Knob will not be deprived of its only local service because it is currently served by daytime AM Station KAPZ, 710 kHz. Finally, petitioner states that the provision of a first local service to Greenbrier satisfies Priority 3 of the Commission's allotment priorities,<sup>2</sup> thus resulting in a preferential arrangement of allotments when compared to the retention of a second local service at Bald Knob.

<sup>1</sup> 4 FCC Rcd 3870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). The Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities.

<sup>2</sup> In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

3. In support of its proposal, petitioner states that Greenbrier is an incorporated community with a population of 3,042 persons, according to the 2000 U.S. Census. Petitioner states that Greenbrier has experienced rapid growth in recent years, growing from 2,130 residents in 1990 to 3,042 in 2000, a 43 percent increase. Greenbrier is self-governing with its own mayor, city council, and volunteer fire department, police department, and municipal court. Greenbrier has its own municipal water and sewer system, public library ("Greenbrier Public Library"), and school district ("Greenbrier School District"), which includes an elementary school, middle school, junior high, and high school. There are several churches, banks, restaurants, and other businesses that serve the community of Greenbrier. Many of these businesses and organizations incorporate the community's name in their business or organization's name.

4. The petitioner's proposal involves a change of transmitter site that will create some gain and loss areas. The loss area, consisting of 4,116 square kilometers, contains 77,818 persons. The gain area, consisting of 4,116 square kilometers, contains 126,152 persons. The proposal thus would produce a net gain of 48,334 persons and neither gain nor loss in the land area served. Adoption of the proposal would not result in the creation of a white or gray area. There are several small sections of the loss area of Channel 296C3 at Bald Knob that will be left with fewer than five full-time services once Station KKSJ(FM) moves to Greenbrier. In the loss area, 2,485 persons in 161 square kilometers will be left with four full-time aural broadcast services, and 149 persons in 62 square kilometers will be left with three full-time aural broadcast services. No part of the loss area will be left with fewer than three full-time services. The entire gain area of Channel 296C3 at Greenbrier is already served by at least five other full-time aural broadcast services, and thus, it is a well-served area. Greenbrier is not located within an urbanized area, and the proposed Channel 296C3 facility at Greenbrier would not cover any part of any urbanized area with the 70 dBu contour.

5. This proposal warrants consideration because the proposed allotment would provide Greenbrier with a first local aural broadcast transmission service. Adoption of the proposal also would result in a substantial net gain in persons served by Station KKSJ(FM). Finally, the proposed change of community would eliminate an existing short-spacing. Station KKSJ(FM) is a short-spaced station pursuant to Section 73.215 of the Commission's rules. Petitioner's proposed transmitter site for Channel 296C3 at Greenbrier would be fully-spaced.

6. The proposed allotment could be made with a site restriction of 8.8 km (5.5 miles) northeast of Greenbrier.<sup>3</sup> Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Bald Knob, Arkansas, and Greenbrier, Arkansas:

| <u>Community</u>     | <u>Present</u> | <u>Proposed</u> |
|----------------------|----------------|-----------------|
| Bald Knob, Arkansas  | 296C3          | ----            |
| Greenbrier, Arkansas | ----           | 296C3           |

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<sup>3</sup> The proposed reference coordinates for Channel 296C3 at Greenbrier are: 35-17-28 NL and 92-19-14 WL.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 30, 2004, and reply comments on or before February 17, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on the Petitioner, as follows:

Larry Crain, Managing Member  
Caldwell Broadcasting, LLC  
425 West Capitol Avenue  
Suite 1584  
Little Rock, Arkansas 72201

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

11. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served

by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

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APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the Petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.